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# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-218112

DATE: June 6, 1985

MATTER OF: Wharton Econometric Forecasting Associates

## DIGEST:

Protest that oral advice from agency misled protester into believing that request for information (issued to multiple award schedule contractors) would be followed by a formal request for proposals is denied where advice was inconsistent with the request for information and with the procurement approach permitted by applicable regulations.

Wharton Econometric Forecasting Associates (Wharton) protests the decision of the Department of State (State) to place orders for econometric forecasting services with Data Resources, Inc. (DRI), under General Services Administration (GSA) federal supply multiple-award schedule contract (MASC) No. GS00K8502S1121.

We deny the protest in part and dismiss it in part.

On July 10, 1984, State sent a request for information (RFI) to MASC vendors for "sufficient technical documentation" to permit State to determine which vendors could meet State's requirements for econometric forecasting services. A 24-page statement of requirements and evaluation factors accompanied the RFI; price was not an evaluation factor.

Wharton informally contacted the State official, named in the RFI to provide information, concerning the absence of price as an evaluation criterion. In a letter dated July 24, 1984, to this same official, Wharton described the information received as: "Your suggestion was that it is appropriate for you to check with your contracting people to see how this should be

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handled and that your intent [was to proceed with a competitive procurement if the survey showed competition was available.]" This letter also indicated that Wharton would respond only to the 3-page summary at the beginning of State's RFI. Wharton indicates that it attempted to follow up on this matter, but that its telephone calls were not returned.

Only Wharton and DRI responded to the RFI. After an evaluation of the information submitted by each firm, State concluded that only DRI could meet substantially all of State's requirements. State found Wharton's information to be inadequate, with major deficiencies in Wharton's apparent ability to provide access to certain data bases.

Wharton contests several of the purported deficiencies in its response to the RFI and points to portions of its response which Wharton contends contradict State's findings. Wharton asserts that if State had properly evaluated its information, it could not possibly have determined these areas to be deficient. In response to the statement that Wharton's information was inadequate, Wharton contends that State led it to believe that complete and detailed information was not needed because the RFI would be followed by a competitive procurement. Finally, Wharton notes that it suggested the possibility of savings of up to 50 percent (over a 3-year period) of the State-estimated cost if Wharton were to provide the services and indicated that this proposal would be detailed in Wharton's response to a request for proposals; Wharton contends that State took no notice of these proposed savings in its evaluation. Wharton argues that State's selection of DRI was made in bad faith and reflects State's intent from the beginning to sole-source to DRI.

State argues that even if Wharton were correct regarding the majority of the deficiencies which State found in Wharton's response to the RFI, enough deficiencies remain to justify State's finding that Wharton could not meet its requirements. State also suggests that it cannot be charged with knowledge of the erroneous advice given Wharton about the likelihood of a competitive procurement, although State concedes that this advice was probably given.

In our judgment, the inadequacies in Wharton's response, the presence of which Wharton concedes when it blames them on the advice it received regarding the likelihood of a competitive procurement, were sufficient to provide a reasonable basis for State's determination that Wharton could not clearly meet its needs. If we accept Wharton's proposition that this advice induced Wharton's proposal inadequacies, then the question is whether this advice improperly denied Wharton a fair opportunity to participate in this procurement. On balance, we find that it did not.

We note initially that the RFI itself did not explicitly state that the selection of a contractor would be based on the vendor's responses, and Wharton apparently was uncertain about the RFI's purpose. Wharton was then given erroneous advice regarding the course the procurement would take. On the other hand, we note also that this advice appears to have been neither final nor definitive, based on Wharton's contemporaneous description, with the final outcome hinging on whatever recommendations or approvals the advising official might obtain from State's procurement staff.

Moreover, as a MASC contractor, we think Wharton should have known that agencies commonly solicit GSA schedule vendors, even though prices are generally fixed by the MASC, to identify the MASC vendors capable of meeting the agency's particular requirements and to allow them to propose the appropriate combination of features, equipment and/or services to meet those needs, see, e.g., Dictaphone Corp., 60 Comp. Gen. 260 (1981), 81-1 CPD ¶ 104, and then issue orders against a MASC after receipt and evaluation of vendors' responses without resort to issuance of a formal solicitation. See, e.g., Dictaphone Corp., B-211028, Nov. 11, 1983, 83-2 CPD ¶ 430. In fact, the regulations and implementing procedures governing this procurement make clear that an agency may contact MASC vendors with a statement of its needs, evaluate the responses from those vendors asserting the ability to meet those needs, and then issue an order to the lowest priced MASC vendor that can satisfy the agency's requirements, all without the issuance of a request for proposals or other formal solicitation. See 41 C.F.R. §§ 1-4.1209 and 1-4.1209-3 (1984) and the GSA Teleprocessing Services Program Handbook (October 1981).

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In light of the regulatory requirements and the lengthy RFI which contained an entire page of weighted evaluation factors to be used to evaluate RFI responses, we think Wharton acted at its own risk in choosing to rely on the advice that by its nature was both tentative and inconsistent with the RFI itself. In short, while State may have contributed to what happened here, we think it was Wharton's primary responsibility to have provided the response sought by the RFI or to have secured further clarification from State officials before deciding that the RFI did not require a full response. Moreover, since the inadequacies resulting from Wharton's interpretation were sufficient to support State's elimination of Wharton's response for consideration, this question is dispositive of the protest and the rest of the arguments raised by Wharton are therefore academic.

Accordingly, we find no merit to this issue.

The protest is denied.

*for Seymour E. Van*  
Harry R. Van Cleve  
General Counsel